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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Implementation of Sections of the )  
Cable Television Consumer )  
Protection and Competition Act of )  
1992; Seventh Notice of )  
Proposed Rulemaking )  
 )  
Rate Regulation )

MM Docket 92-266

To: The Commission

REPLY COMMENTS OF VIACOM INTERNATIONAL INC.

Viacom International Inc. ("Viacom"), by its attorneys, hereby submits its reply comments in the above-captioned cable rate regulation proceeding.<sup>1</sup> The record in this proceeding reflects near-universal opposition to the proposal set forth in the Seventh Notice of Proposed Rulemaking ("Notice") to eliminate the 7.5 percent mark-up on increased license fees for already-carried program services.

The comments of operators and programmers convincingly demonstrate that the proposed elimination of this mark-up would disserve the substantial public interest in maintaining and improving the quality of programming that existing program services would be able to provide in a rate regulated climate. In contrast, the record provides no specific

<sup>1</sup> Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 (Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking) in MM Docket No. 92-266, FCC 94-286 (rel. Nov. 18, 1994).

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support for eliminating the 7.5 percent mark-up.

Accordingly, Viacom respectfully submits that there is no basis in the record for adoption of the Notice's proposal.

**I. THE RECORD STRONGLY SUPPORTS RETAINING, AND EVEN ENHANCING, THE 7.5 PERCENT MARK-UP ON LICENSE FEE INCREASES FOR ALREADY-CARRIED PROGRAM SERVICES**

A wide range of operator and programmer interests opposes the FCC's proposal to discontinue the existing 7.5 percent mark-up on license fee increases for existing program services.<sup>2</sup> These commenters generally concur with Viacom that the Notice's proposal is based on a fundamental misconception of the role and necessity of license fee increases in a program service's ability to offer consumers high quality, desirable programming.<sup>3</sup>

As Viacom explained in its opening comments, the typical struggle for advertiser-supported program services to expand and improve programming begins with hard-fought negotiations for increased license fees. Under rate regulation, of course, operators have become even more reluctant to agree to

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<sup>2</sup> See, e.g., Comments of A&E Television Networks, Inc.; Comments of Affiliated Regional Communications, Ltd.; Comments of Comcast Cable Communications, Inc., Cox Communications, Inc., and Jones Intercable, Inc.; Comments of Discovery Communications, Inc.; Comments of National Cable Television Association; Comments of Lifetime Television; Comments of United Video; Comments of Viacom International Inc.

<sup>3</sup> See, e.g., A&E at 9-10; Discovery at 4-8; Lifetime at 3-10.

license fee increases that -- marked up just 7.5 percent -- would erode their already narrowed profit margin on regulated tiers. Yet the increased financial support of cable operators is critical to the programmer's ability to improve its services and thereby gain sufficient market share and advertising revenue to ultimately reduce the need for large license fee increases. As Viacom and others have made clear, however, this financial support will simply not be forthcoming if regulated cable operators are not offered a direct financial incentive to provide it.<sup>4</sup> The ultimate victim of this elimination of the mark-up on increased license fee support for already-carried program services would, of course, be the cable consumer.

Nothing in the record contradicts this public interest analysis. This is not surprising given that the mark-up represents a de minimis consumer cost that pales in comparison to the potential loss consumers would suffer if the mark-up were eliminated and such license fee support eroded. The virtual absence of any consumer or governmental outcry for rescinding the mark-up only serves to underscore this point.

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<sup>4</sup> Indeed, Viacom has proposed and continues to support an enhanced mark-up equal to the average percentage margin embedded in each system's regulated tier under its applicable benchmark rates. See Comments of Viacom International Inc. (filed June 29, 1994) at 8.

Only the Sacramento Metropolitan Cable Television Commission ("Sacramento") voices opposition to operator recovery of programming cost increases.<sup>5</sup> Yet even that commenter does not direct its objections at the 7.5 percent mark-up per se, but rather at operators' recovery of programming cost increases generally.<sup>6</sup> Hence, the record in this proceeding provides no policy basis whatsoever for eliminating the 7.5 percent mark-up on operator support for existing program services.

## II. CONCLUSION

For the foregoing reasons, Viacom respectfully urges the Commission not to eliminate, but rather to enhance, the 7.5 percent mark-up on operator license fee support for already-

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<sup>5</sup> See Comments of Sacramento 1-3. Sacramento erroneously asserts that the pass-through of programming cost increases removes incentives for operators to aggressively negotiate programming contracts because an operator can recover investments in programming "automatically" from subscribers. Sacramento fails to recognize, first, that cable operators are duly constrained by the effects of license fee increases on subscriber penetration and operator margins and, second, that a cable operator -- like any other business -- will only make an investment if it can recover its outlay and earn a favorable return. Yet even with a 7.5 percent mark-up on programming cost increases, operator investment in existing program services compares unfavorably with the 11.25 percent mark-up the cost-of-service rules provide for investment in "hard" assets.


<sup>6</sup> To the extent that Sacramento bases its objections on the operator's newly-created ability to "clone" program services carried on CPSTs to NPTs, Viacom concurs that cloning is contrary to the public interest.

carried program services. As the record in this proceeding overwhelmingly confirms, the public interest in promoting a wealth of quality programming options requires that cable operators retain financial incentives to invest in program services currently carried on their systems.

Respectfully submitted,

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